COURT NO. 2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Income Tax Appeal No.168 of 2004

Ensco Maritime Ltd.
(earlier known as Dual Offshore Ltd.)
As agent of Mr. Billy Ray Fausphaoul
C/o Nangia & Company,
Chartered Accountants,
75/7 Rajpur Road, Dehradun

..... Appellant

Versus

The Commissioner of Income Tax, Dehradun

..... Respondents

Ms. Krishi Shukla, Advocate for the appellant.
Mr. S.K. Posti, Advocate for the respondents.

Dated: December 17, 2005

Coram: Hon. P.C. Verma, J.
Hon. J.C.S. Rawat, J.

Both the parties are ready to argue the matter today.

2. This appeal has been preferred against the order dated 26.07.2004 for the assessment year 1998-99, passed by the Income Tax Appellate Tribunal, (Bench 'F' New Delhi).

3. The learned counsel for the parties agree that the following only two questions of law arise in this appeal for the determination. They do not press the rest of the questions framed in the appeal: -

1. **Whether the learned I.T.A.T. has erred in law in holding that the appellant has failed to satisfy the condition that 'the remuneration is not deductible in**

computing the profits of an <u>enterprise chargeable to tax in that other State'?</u>

2. Whether the Tribunal was right in holding that off period salary was not taxable under section 9(1)(ii) read with the Explanation as it stood at the relevant time?

4. So far as the question No.1 is concerned, this question has already been decided by Division Bench of this Court {in which one of us (P.C.Verma,J.) was a member} in case of "Sedco Forex International Inc. Vs. The Commissioner of Income Tax and another", which was decided on 22.07.2005 in Income Tax Appeal No.165 of 2001. In the said judgment, the question framed in the said appeal was answered in favour of the Revenue.

5. The second question has also been decided by the Hon'ble Apex Court in Civil Appeal Nos.351-355 of 2005 "**Sedco Forex International Drill Inc. and Others Vs. Commissioner of Income Tax, Dehradun and Another, JT 2005(9) SC 639**". In view of the aforesaid decision of the Hon'ble Apex Court, this question is answered in favour of the assessee.

6. In view of the above, we dispose of the appeal accordingly.

(J.C.S. Rawat, J.) **(P.C. Verma, J.)**

Rajeev Dang